



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5954 8837

Mr. Herman (Cheuk) Lee
LaBelle Farm, Inc.
P.O. Box 555
504 Stanton Corners Road
Ferndale, New York 12734

Re: In the Matter of: LaBelle Farm, NYA001500
Administrative Order CWA-02-2012-3046


Dear Mr. Lee:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that the above-named facility, LaBelle Farm, Inc., is in violation of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1311 for National Pollutant Discharge Elimination System ("NPDES") violations as described in the findings to this Administrative Order ("AO" or "Order"). Enclosed are two (2) originals of this Order, issued pursuant to Sections 309 and 308 of the Act, which detail the findings.

Please acknowledge receipt of this Order on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the facility to civil and/or criminal penalties pursuant to Section 309 of the Act. Compliance with the terms of this Order shall not preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. §1319.

For your information, I am enclosing an Information Sheet which may be helpful in obtaining compliance assistance if you are a small business as defined at 13 C.F.R. 121.201, or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board. Should you have any questions concerning this matter, please contact Ms. Justine Modigliani, Compliance Section Chief at (212) 637-4268 or Ms. Kimberly McEathron, of my staff, at (212) 637-4228.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Order
2. Inspection Report
3. Information for Small Business

cc: Joseph DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC
Tom Rudolph, Regional Water Engineer, NYSDEC Region 3
Erin Shirkey, NYSDEC, Region 3 (electronic)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Herman (Cheuk) Lee
LaBelle Farm, Inc.
P.O. Box 555
504 Stanton Corners Road
Ferndale, New York 12734

Proceeding pursuant to Sections 308(a) and
309(a) of the Clean Water Act, 33 U.S.C.
§§1318(a) and 1319(a)(3)

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2012-3046

The following Findings of Violation are made, and Order for Compliance ("Order") issued, pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§1318(a) and 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2, and since further redelegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.

A. Legal Authority

1. Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA 33 U.S.C. §1342.
2. Section 402 of the CWA, 33 U.S.C. §1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.
3. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
4. The Administrator of EPA has promulgated regulation 40 C.F.R. §122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with

Concentrated Animal Feeding Operations. The regulations at 40 C.F.R. §122.23 establish requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.

5. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. §1362 to include, *inter alia*, biological materials and agricultural waste discharged to water.
6. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. §1362 to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation ... from which pollutants are or may be discharged."
7. "Waters of the United States" are defined in 40 C.F.R. §122.2 to include intrastate rivers and streams, and tributaries thereto.
8. An "animal feeding operation" or "AFO" is defined by 40 C.F.R. §122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
9. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. §122.23(b)(2) as an AFO that is, *inter alia*, a medium CAFO.
10. A "large CAFO" is defined by 40 C.F.R. §122.23(b)(6)(i) as an animal feeding operation that stables or confines as many or more than 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system or more than 5,000 ducks, if the AFO uses a liquid manure handling system.
11. "Process wastewater" is defined by 40 C.F.R. §122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.
12. "Production area" is defined by 40 C.F.R. §122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.
13. The terms "CAFO General Permit" or "Permit" mean the NYSDEC SPDES General Permit for Concentrated Animal Feeding Operations issued by NYSDEC, pursuant to Section 402 of the CWA. NYSDEC issued SPDES General Permit for Concentrated Animal Feeding Operations (GP-04-02) on June 24, 2004. The permit became effective on July 1, 2004 and expired on June 30, 2009 and has been administratively extended. The current permit (GP-04-02) supersedes the previous SPDES permit (GP-99-01) which was issued on June 18, 1999 with an effective date of July 1, 1999 and an expiration date of June 30, 2004.

B. Factual Background

1. Herman (Cheuk) Lee, doing business as LaBelle Farm, Inc. ("Respondent"), owns and operates an animal feeding operation located in Ferndale, NY ("Facility").
2. On March 27, 2006, LaBelle Farm, Inc. obtained coverage for four (4) LaBelle Farm, Inc. farmsteads (LaBelle, Bella, Able and Goyin Farms) under one (1) NYSDEC SPDES General Permit for Concentrated Animal Feeding Operations, GP-99-01 (NYA001500).
3. The Facility's current Notice of Intent or Termination ("Appendix A") signed by Cheuk Lee on March 22, 2006 and received by NYSDEC on March 27, 2006, lists Herman (Cheuk) Lee, of LaBelle Farm, Inc. as the owner and operator of all four (4) farms.
4. EPA conducted a Compliance Evaluation Inspection ("CEI") of the Facility on April 18, 2012.
5. LaBelle Farm is located at 504 Stanton Corners Road, Ferndale, NY and at the time of the inspection, the Facility was confining approximately 25,000 ducks on-site using a liquid manure handling system. Production area runoff from the LaBelle Farm discharges to Middle Mongaup River in the Delaware River drainage basin. According to on-site representatives, LaBelle Farm is owned by B & B Farms, Inc. and is operated by LaBelle Farm, Inc.
6. Bella Farms (Bella-Old and New) are located at 28 and 29 Fraser Road, Ferndale, NY and at the time of the inspection the farms were confining approximately 250,000 broiler chickens on-site using a dry manure handling system. Production area runoff from Bella Farms discharges to an unnamed tributary of the Beaverdam Brook or to the Frasers Brook, tributaries to the Mongaup River in the Delaware River drainage basin. According to on-site representatives, Bella Farm is owned by Saiping Enterprises, Inc. and is operated by Bella Poultry, Inc.
7. Able Farm is located at 379 Dessecker Road, Livingston Manor, NY and at the time of the inspection, the farm was confining approximately 12,000 ducks on-site using a dry manure handling system. Production area runoff from Able Farm discharges to a tributary to the Horseshoe Brook in the Delaware River drainage basin. According to on-site representatives, Able Farm is owned by Hector and Nelson Saravia and is operated by Jose L. Farms, Inc.
8. Goyin Farm is located at 389 Monticello Road, Liberty, NY and at the time of the inspection, the farm was confining approximately 20,000 ducks on-site using a dry manure handling system. Production area runoff from Goyin Farm discharges to a tributary of the East Mongaup River in the Delaware River drainage basin. According to on-site representatives, Goyin Farm is owned by B & B Farm, Inc. and is operated by LaBelle Farm, Inc.
9. The Facility confines and feeds or maintains animals for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. §1362(14).
10. The Facility confines greater than 5,000 ducks using a liquid manure system as well as confines greater than 125,000 chickens (other than laying hens) using other than a liquid manure handling

system. Therefore, the Facility is currently a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(6)(i)(A).

C. Findings of Violation

During the CEI on April 18, 2012, EPA observed the following violations of the LaBelle Farm, Inc.'s SPDES permit (NYA001500) as documented in the CEI report:

1. Section V.C of the CAFO General Permit requires the permittee and the new owner or operator to submit a complete Notice of Transfer form (Appendix A). Simon Lee has been the owner and operator of Bella-Old and New Farms (Bella Poultry, Inc.) since December 2009 and is not listed as the owner of Bella Poultry, Inc. in the current NYSDEC Notice of Intent dated March 2006 and a Notice of Transfer form (Appendix A) has not been submitted for Bella Farms. A CNMP certification (Appendix B) has not been submitted to NYSDEC for Bella Poultry, Inc. Also, Able Farm is owned by Nelson and Hector Saravia and operated by Jose L. Farms, Inc., neither of which is listed as the owner or operator on the most recent NYSDEC Notice of Intent dated March 2006. Therefore, LaBelle Farm, Inc. failed to submit a Notice of Transfer form (Appendix A) to identify the new owners and operators of the Bella and Able Farms, in violation of Section V.C of the CAFO General Permit.
2. Section VII.A of the CAFO General Permit states CNMPs are required to be prepared in accordance with "NRCS Conservation Practice Standard No. NY312". Specifically, NY312 states that clean water shall be excluded from concentrated waste areas to the fullest extent practical. At 40 C.F.R. 122.42(e), the Federal CAFO Rule also specifies what a Nutrient Management Plan (NMP) must address, at a minimum. Specifically, NMPs should ensure that clean water is diverted, as appropriate, from the production area (see 40 C.F.R. 122.42(e)(iii)). At the time of the inspection, the EPA inspector observed that clean water comes into contact with the production area at the following locations inconsistent with CNMP requirements, in violation of Section VII.A of the CAFO General Permit:
 - a. A pile of burnt wood waste at the south end of the Mortality Compost Storage Building, two (2) sand piles and debris around the New Production Facility exposed to stormwater at Bella-Old Farm;
 - b. Feathers on the ground north of the Coop exposed to stormwater at Able Farm; and
 - c. Manure and soil at the loading area on the south side of the Coop exposed to stormwater at Goyin Farm.
3. Section VII.E of the CAFO General Permit requires the permittee to comply with all provisions of the CNMP. According to the Facility's 2011 manure application records, manure was over-applied to LaBelle field and was applied in February, April and December, inconsistent with CNMP recommendations. Therefore, LaBelle Farm, Inc. failed to apply manure in accordance with the CNMP, in violation of Section VII.E of the CAFO General Permit.

- a. Section VIII.C.xi of the CAFO General Permit states that “[c]ollection, storage, and disposal of liquid and solid waste should be managed in accordance with NRCS standards.” NRCS Conservation Practice Standard No. 313 “Waste Storage Facility” specifies general criteria applicable to all waste storage facilities as well as additional criteria for waste storage ponds. Specifically, NY313 states that an operation and maintenance plan shall be developed that is consistent with the purposes of this practice, its intended life, safety requirements, and the criteria for its design. On-site representatives could not provide the As-Built Certification for the design and construction of the Manure Storage structure at LaBelle Farm nor could they provide an operation and maintenance plan for the structure.
- b. Section VIII.C.xiii of the CAFO General Permit requires the permittee to retain records of manure exports and to provide the recipient of manure, litter and/or process wastewater with representative information on the nutrient content for all instances where one (1) recipient receives greater than 50 tons annually. On-site representatives stated that they were unsure if these recipients have received information regarding the nutrient content of the manure, litter and/or process wastewater.
- c. Section IX.K of the CAFO General Permit requires the permittee to install and maintain a standard rain gauge in the proximity of the confinement area and record all precipitation events in excess of 0.3 inches. Daily rainfall records were not available from March 2007 through December 2007.
- d. Section IX.M of the CAFO General Permit requires all large CAFOs to analyze manure at least once annually for nitrogen and phosphorus content. Manure analysis test results were not available for review on-site. According to 2011 manure application records, manure from Goyin Farm was land applied to the field at LaBelle Farm but 2011 manure analysis test results for Goyin Farm were not available for review at the time of the inspection.
- e. Section IX.N.ii of the CAFO General Permit requires daily water line inspections, including drinking water and cooling water lines to be conducted and Section IX.O.i requires records of those inspections to be documented. Daily grounds inspections records were not available from March 2007 through December 2007 and were conducted every other day at LaBelle Farm from January 2012 to March 2012.
- f. Section IX.O of the CAFO General Permit specifies that dates of manure application equipment inspection should be documented as part of the Land Application Area records requirements. Manure application equipment inspections from April 2007 to April 2012 were not available at the time of the inspection.
- g. Section IX.O.ii of the CAFO General Permit requires weekly records of the depth marker reading for manure and process wastewater in any open liquid storage structures. Weekly records of the depth marker readings at the LaBelle Farm Manure storage structure had not been documented from March 2007 to March 2012.

- h. Section IX.O.iv of the CAFO General Permit requires records for the handling and disposal of dead animals. Records of mortalities were not available from March 2007 through December 2008.
5. Section X.G of the CAFO General Permit requires the permittee to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the permit. Inadequate operation and maintenance was observed at the following locations, in violation of Section X.G of the CAFO General Permit:
- a. Areas lacking vegetation along the east side of Coop #1 and west side of Coop #3 at LaBelle Farm;
 - b. Vegetation kill zones extending east of the center exhaust fan on the east side of Coop #4 and directly east of the northern most exhaust fan and center exhaust fan on the east side of Coop #2 at Bella-New Farm;
 - c. Vegetation kill zones along the north side of Coop #2 where the exhaust fans are located at Bella-Old Farm adjacent to a ditch that contained green and brown discolored water;
 - d. Areas lacking vegetation along the southeast side of the Coop adjacent to exhaust fans at Able Farm and a severely eroding slope on the southeast side of the Coop extending downhill to a tributary to the Horseshoe Brook; and
 - e. Significant solids accumulation in the Manure Storage structure at LaBelle Farm.

D. Ordered Provisions

Based on the Findings of Violation set forth above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§1318(a) and 1319(a)(3), LaBelle Farm, Inc. is hereby ORDERED to take the following actions:

1. LaBelle Farm, Inc. shall immediately upon receipt of the original copies of this ORDER, a responsible official of LaBelle Farm, Inc. shall complete and sign the acknowledgment of receipt of one of the originals of the ORDER and return said original to the Chief, Water Compliance Branch, in the enclosed envelope to the address listed below in the General Provisions.
2. LaBelle Farm, Inc. shall within fifteen (15) calendar days of receipt of this Order, ensure that clean water does not come into contact with the production area in accordance with the CAFO General Permit, including but not limited to the following locations:
 - a. A pile of burnt wood waste at the south end of the Mortality Compost Storage Building, two (2) sand piles and debris around the New Production Facility exposed to stormwater at Bella-Old Farm;
 - b. Feathers on the ground north of the Coop exposed to stormwater at Able Farm; and
 - c. Manure and soil at the loading area on the south side of the Coop exposed to stormwater at Goyin Farm.
3. LaBelle Farm, Inc. shall within thirty (30) calendar days of receipt of this Order, file a Notice Of Transfer form (Appendix A) in accordance with the CAFO General Permit, that accurately

incorporates Bella Poultry, Inc., Jose L. Farms and all owners and operators of the LaBelle, Bella, Goyin and Able farmsteads.

4. LaBelle Farm, Inc. shall within thirty (30) calendar days of receipt of this Order, comply with all provisions of the CNMP, including but not limited to the application and timing of manure spreading, in accordance with the CAFO General Permit.
5. LaBelle Farm, Inc. shall within thirty (30) calendar days of receipt of this Order, retain records and reports, in accordance with the CAFO General Permit, for a period of at least five (5) years from the date reported, including but not limited to the following:
 - a. As-built certification for the Manure Storage structure at LaBelle Farm;
 - b. Operation and maintenance plan for the Manure Storage structure at LaBelle Farm;
 - c. Provide information regarding the nutrient content of manure, litter and/or process wastewater for all instances where one (1) recipient receives greater than 50 tons annually;
 - d. Daily rainfall records;
 - e. Manure analysis test results, specifically for Goyin Farm;
 - f. Daily water line inspections;
 - g. Dates of manure application equipment inspections;
 - h. Weekly records of manure storage structure depth marker readings; and
 - i. Records for handling and disposing of dead animals.
6. LaBelle Farm, Inc. shall within sixty (60) calendar days of receipt of this Order, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the CAFO General Permit, including but not limited to:
 - a. Establishing and maintaining vegetation outside the Coop exhaust fans; and
 - b. Removing solids that have accumulated in the Manure Storage structure at LaBelle Farm.
7. Within seven (7) calendar days upon completion of each of the Ordered Provisions 2 through 6 above, LaBelle Farm, Inc. shall provide written notification with accompanying photographs and documentation to EPA demonstrating what steps were taken to complete each Ordered Provision and achieve compliance with the CAFO General Permit.
8. LaBelle Farm, Inc. shall submit to EPA on a monthly basis manure application and export records. Manure application and export records will be due on a monthly basis commencing July 31, 2012 until December 31, 2012.

E. General Provisions

1. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.

2. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating an administrative or judicial enforcement action to recover, penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. §1319.
3. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect Respondent's facility, and/or request additional information from Respondent, pursuant to Section 308 of the CWA, 33 U.S.C. §1318.
4. The EPA may subsequently amend this Order in accordance with the CWA. For example, the EPA may amend this Order to address any non-compliance with the CWA, including but not limited to any non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment will remain in full force and effect.
5. If any provision or authority of this Order or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
6. All submissions to the EPA required by this Order shall be sent to:

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007

7. Any written report sent to EPA in accordance with this Order will include the following statement:

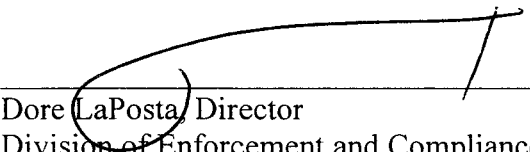
I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

8. Pursuant to 40 C.F.R. §§2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. §2.203(b) allows the EPA to release the submitted information to the public without further notice. The EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations.

Special rules governing information obtained under the Clean Water Act appear in 40 C.F.R. §2.302.

9. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to a civil action in federal district court, pursuant to Section 309(b) of the Act, 33 U.S.C. §1319(b), for (1) civil penalties up to \$37,500 per day for each violation, and/or (2) other injunctive relief.
10. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

JUNE 15, 2012
Date



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Herman (Cheuk) Lee
LaBelle Farm, Inc.
P.O. Box 555
504 Stanton Corners Road
Ferndale, New York 12734

Respondent

Proceeding pursuant to §309(a) of the Clean Water
Act, 33 U.S.C. §1319(a)

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2012-3046

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an officer of LaBelle Farm, Inc. with the title of,
_____, do hereby acknowledge the receipt of copy of the ADMINISTRATIVE
COMPLIANCE ORDER, CWA-02-2012-3046.

DATE: _____

SIGNED: _____